

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ISAAC ROBERTS, :
Petitioner : CIVIL ACTION NO. 3:17-0252
v. : (Judge Mannion)
KEVIN KAUFFMAN, :
Respondent :

MEMORANDUM

Petitioner, Isaac Roberts, an inmate confined in the State Correctional Institution, Huntingdon, Pennsylvania, filed the instant petition for writ of habeas corpus pursuant to [28 U.S.C. §2254](#). He attacks a conviction imposed by the Court of Common Pleas for Dauphin County, Pennsylvania. (Doc. [1](#)). Following careful consideration of the parties' submissions, and for the reasons discussed below, the Court will dismiss the petition as untimely. See [28 U.S.C. §2244\(d\)](#).

I. Background

On June 22, 2011, following a jury trial in the Court of Common Pleas of Dauphin County, Petitioner was found guilty of third degree murder, homicide by vehicle, fleeing and eluding, accidents involving death, persons

not to possess a firearm, carrying a firearm without a license, unlawful possession of a small amount of marijuana, and unlawful possession of drug paraphernalia. Comm. of Pa. v. Roberts, CP-22-CR-0002876-2010. On July 26, 2011, Roberts was sentenced to a term of incarceration of 23 to 46 years of imprisonment. Id.

On August 30, 2011, Petitioner filed a direct appeal to the Pennsylvania Superior Court. Id.

By Memorandum Opinion dated June 5, 2012, the Superior Court of Pennsylvania affirmed Roberts' judgment of sentence. See Comm. of PA v. Roberts, 1510 MDA 2011. Roberts did not file for allowance of appeal to the Pennsylvania Supreme Court. See Comm. of Pa. v. Roberts, CP-22-CR-0002876-2010.

On June 10, 2013, Roberts filed a *pro se* petition for relief under the Pennsylvania Post Conviction Relief Act ("PCRA"), 42 Pa. C.S.A. §§9541 et seq. See Comm. of Pa. v. Roberts, CP-22-CR-0002876-2010. Counsel was appointed, but rather than filing an amended PCRA petition, Roberts' counsel filed a Turner/Finley petition seeking permission to withdraw. Id.

On October 7, 2013, the PCRA Court provided Roberts with a notice of its intent to dismiss the PCRA petition pursuant to Pa.R.Crim.P. 907. Id.

Petitioner filed a response to the Court's notice on October 31, 2013. Id.

On June 10, 2014, the Court granted counsel's request to withdraw and dismissed Roberts' PCRA petition. Id.

On June 23, 2014, Roberts timely filed a *pro se* notice of appeal from the Court's June 10, 2014 dismissal. See Comm. of PA v. Roberts, 1510 MDA 2011.

By Order dated January 8, 2015, the Pennsylvania Superior Court dismissed Petitioner's appeal for Petitioner's failure to file a brief, after having granted Petitioner several extensions of time within which to do so. Id.

On January 12, 2016, Petitioner filed a motion to reinstate his appeal, which was denied on January 15, 2015. Id.

On February 10, 2017, Petitioner filed the instant petition for writ of habeas corpus. (Doc. [1](#), petition).

II. **Discussion**

A state prisoner requesting habeas corpus relief pursuant to [28 U.S.C. §2254](#) must adhere to a statute of limitations that provides, in relevant part, as follows:

(d)(1) A one-year period of limitations shall apply to an application for a writ of habeas corpus by a person

in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of - (A) the date on which the judgment became final by the conclusion of direct review or the expiration for seeking such review . . .

(d)(2) The time during which a properly filed application for State post conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. §2244(d)(1)-(2)(emphasis added); see generally, Jones v. Morton, 195 F.3d. 153, 157 (3d Cir. 1999). Thus, under the plain terms of §2244(d)(1)(A), the period of time for filing a habeas corpus petition begins to run when direct review processes are concluded. See Harris v. Hutchinson, 209 F.3d 325, 327 (4th Cir. 2000). (“[T]he AEDPA provides that upon conclusion of direct review of a judgment of conviction, the one year period within which to file a federal habeas corpus petition commences, but the running of the period is suspended for the period when state post-conviction proceedings are pending in any state court.”); Fields v. Johnson, 159 F.3d 914, 916 (5th Cir. 1998)(*per curiam*); Hoggro v. Boone, 150 F.3d 1223, 1226 (10th Cir. 1998). It is not the conclusion of state post-conviction collateral review processes that starts the running of the limitations period. See Bunnell v. Yukins, No. 00-CV-73313, 2001 WL 278259, *2 (E.D. Mich. Feb 14,

2001) (“Contrary to Petitioner’s assertion, the limitations period did not begin to run anew after the completion of his post-conviction proceedings.”).

As indicated above, section 2244(d)(2) operates to exclude only the time within which a “properly filed application” for post conviction relief is pending in state court. Thus, when a petition or appeal has concluded and is no longer pending, the one (1) year statute of limitations starts to run and the time is counted. A “properly filed application” for post conviction relief under §2244(d)(2) is one submitted according to the state’s procedural requirements, such as rules governing time and place of filing. Lovasz v. Vaughn, 134 F.3d 146, 148 (3d Cir. 1998). The Third Circuit Court of Appeals has defined “pending” as the time during which a petitioner may seek discretionary state court review, whether or not such review is sought. Swartz v. Meyers, 204 F.3d 417 (3d Cir. 2000). “Pending,” however, does not include the period during which a state prisoner may file a petition for writ of certiorari in the United States Supreme Court from the denial of his state post-conviction petition. Stokes v. District Attorney of the County of Philadelphia, No. 99-1493, 2001 WL 387516, at *2 (3d Cir., April 17, 2001). Likewise, the statute of limitations is not tolled under §2244(d)(2) for the time during which a habeas petition is pending in federal court. Jones, 195 F.3d at 158.

The AEDPA statute of limitations also may be subject to equitable tolling. The Third Circuit has held that the federal habeas statute of limitations is subject to equitable tolling only in extraordinary circumstances. See [Merritt v. Blaine, 326 F.3d 157, 161 \(3d Cir. 2003\)](#). In [Merritt](#), the Court of Appeals set forth two general requirements for equitable tolling: “(1) that the petitioner has in some extraordinary way been prevented from asserting his or her rights; and (2) that the petitioner has shown that he or she exercised reasonable diligence in investigating and bringing the claim.” [Id.](#) (internal citations and quotations omitted).

A. Statutory Tolling

In this case, because Petitioner did not file a petition for allowance of appeal with the Pennsylvania Supreme Court, his conviction became final on July 5, 2012, or thirty (30) days after the Pennsylvania Superior Court affirmed Petitioner’s conviction and sentence. See [42 Pa.C.S.A. §9545\(b\)\(3\); Pa.R.App.P. 903; Pa.R.Crim.P. 720\(a\)\(3\)](#). Thus, the clock for filing a federal habeas petition began running on July 5, 2012, and Roberts had until July 5, 2013 to file a timely habeas corpus petition. [Burns v. Morton, 134 F.3d 109, 111 \(3d Cir. 1998\)](#).

Pursuant to [28 U.S.C. §2244\(d\)\(2\)](#), when Roberts filed his timely PCRA

petition on June 10, 2013, the AEDPA's filing period was statutorily tolled with approximately 25 days of the one (1) year filing period remaining. See Harris, 209 F.3d at 328. Petitioner's PCRA petition was pending until January 8, 2015, when the Superior Court dismissed Petitioner's appeal for failure to file a brief. Because Roberts did not seek relief from the Pennsylvania Supreme Court, his judgment of sentence became final on February 9, 2015, thirty days after the Pennsylvania Superior Court affirmed the judgment of sentence, and the time for filing a petition for allowance of appeal with the Pennsylvania Supreme Court expired. See 28 U.S.C. §2244(d)(1)(A); Pa. R. App. P. 1113; 42 Pa.C.S.A. §9545(b)(3). Accordingly, the remaining 25 days of the one-year limit for Petitioner to timely file a federal petition for writ of habeas corpus began on February 9, 2015 and expired on March 11, 2015. The instant petition was not filed until February 10, 2017, almost two years after the limitations period expired. Thus, the petition for habeas corpus relief is barred by the statute of limitations, and should be dismissed as untimely, unless the statute of limitations is subject to statutory or equitable tolling.

B. Equitable Tolling

A habeas petitioner may also be entitled to equitable tolling of the AEDPA statute of limitations. See Merritt v. Blaine, 326 F.3d 157, 161 (3d Cir.

[2003](#)), cert. denied, [540 U.S. 921 \(2003\)](#) (holding that AEDPA's time limit is subject to the doctrine of equitable tolling, a judicially crafted exception). However, the habeas petitioner bears the burden of demonstrating his entitlement to equitable tolling and his due diligence. [Pace v. DiGuglielmo, 544 U.S. 408, 418 \(2005\)](#); [Cooper v. Price, 82 Fed. Appx. 258, 260 \(3d Cir. 2003\)](#). Moreover, the federal habeas statute of limitations is subject to equitable tolling only in extraordinary circumstances. See [Merritt, 326 F.3d at 161](#). Thus, while equitable tolling is permitted in state habeas petitions under AEDPA, it is not favored. "Courts must be sparing in their use of equitable tolling" and only permit equitable tolling where "principles of equity would make rigid application of a limitation period unfair." [Sistrunk v. Rozum, 674 F.3d 181, 189 \(3d Cir. 2012\)](#).

In [Merritt](#), the Third Circuit Court of Appeals set forth two general requirements for equitable tolling: "(1) that the petitioner has in some extraordinary way been prevented from asserting his or her rights; and (2) that the petitioner has shown that he or she exercised reasonable diligence in investigating and bringing the claims." [Merritt, 326 F.3d at 168](#) (internal citations and quotations omitted). Mere excusable neglect is not sufficient. [Miller v. New Jersey State Dep't of Corrections, 145 F.3d 616, 618–19 \(3d Cir.](#)

1998). The Court of Appeals has identified additional circumstances in which equitable tolling is warranted: (1) the defendant has actively misled the plaintiff, (2) the plaintiff has in some extraordinary way been prevented from asserting his rights, (3) the plaintiff has timely asserted his rights mistakenly in the wrong forum, and (4) the claimant received inadequate notice of his right to file suit, a motion for appointment of counsel is pending, or where the court has misled the plaintiff into believing that he had done everything required of him. See Yanes v. Nish, 2009 WL 1045884, *2 (M.D.Pa. 2009) (Caldwell, J.) (citing Jones, 195 F.3d at 159).

In the present matter, Petitioner does not argue that he is entitled to equitable tolling and he presents no evidence to account for the delay in filing the instant federal petition for writ of habeas corpus. Petitioner does not allege that he has been actively misled by Respondents or the Court, and the record reflects no basis for such an argument.

Furthermore, it does not appear that Petitioner's rights were prevented in an extraordinary manner, he fails to allege that he exercised due diligence in investigating and bringing his claim, and he has not alleged that he asserted his rights in the wrong forum. As such, equitable tolling is inapplicable in this matter.

III. Certificate of Appealability.

When a district court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, a certificate of appealability should issue only if (1) the petition states a valid claim for the denial of a constitutional right, and (2) reasonable jurists would find it debatable whether the district court was correct in its procedural ruling. [Slack v. McDaniel, 529 U.S. 473, 484 \(2000\)](#). In this case, reasonable jurists could not disagree that the instant petition is time-barred. It is statutorily barred, and neither statutory nor equitable tolling apply to the petition.

IV. Conclusion

In light of the foregoing, the petition for writ of habeas corpus will be **DISMISSED**, and the case will be **CLOSED**. An appropriate order will follow.

s/ *Malachy E. Mannion*
MALACHY E. MANNION
United States District Judge

DATED: July 10, 2019

17-0252-01